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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,466	03/29/2000	Daniel F White	8755.00	6699

7590

01/23/2003

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EXAMINER

GARG, YOGESH C

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/538,466

Applicant(s)

WHITE, DANIEL F

Examiner

Yogesh C Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Response to Office action, paper number 3, is acknowledged and entered. No amendments have been made. Receipt of new drawings FIGS. 1-5 is acknowledged. Currently claims 1-6 are pending for examination.

Response to Arguments

2. Applicant's arguments filed with regards to claim objection against claims 1-2 are not persuasive because it is not definite if the term "duplicate" in claim limitation "receiving a duplicate from a person who transported the duplicate from a remote location" (see page 15, lines 8-10) refers to the "code" recited in claims 1 (a) and 1 (b) or to a separate entity altogether.

3. With respect to the applicant's arguments regarding claims 1-4 filed in reference to rejection under 35 U.S.C. 112, second paragraph, rejection is withdrawn.

4. Applicant's arguments filed with regards to claim rejections under 35 USC § 103 referencing claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

5. This is a non-final rejection.

Drawings

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because:

The disclosure denotes the sandwich as "A" (see page 3, line 5) and whereas in the FIG.2 letters C, D, and E denotes sandwiches.

FIG.4 includes the reference sign(s) "D and M not mentioned in the description.

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-2 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter because:

Claims 1-2 recite within their scope a human being.

The claims recite within its scope a human being ("receiving a duplicate from a person who transported the duplicate from a remote location "). Per Commissioner Quigg's notice published at 1077 OG 24 (April 21, 1987), " a system (apparatus) claim directed to or including within its scope a human being will not be considered to be a patentable subject matter under 35 U.S. C. 101". However, examiner suggests to structure the claim language as " receiving the duplicate code delivered to the different remote location " to avoid 101 rejection of the claim. Note: For further art rejection the same assumption will be made.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claims 1 and 3, it is not definite if the term "duplicate" in claim limitation "receiving a duplicate from a person" (see page 15, lines 8-10 and page 16,

line 1) refers to the "code" recited in claims 1 (a) and 1 (b) and 3 (a) and 3(b) respectively or to a separate entity altogether.

With regards to claim 2, it is unclear if the term "the codes" corresponds to the codes on the merchandise or the codes delivered to different remote locations. In order to impart a definite meaning it is suggested to replace the term " the codes" by " the duplicate code delivered to a different remote location and the code on the item of merchandise ".

With regards to claim 4 e (iii), it is unclear if the term "the codes" corresponds to the identifying codes from an order or the identifying codes from persons. In order to impart a definite meaning it is suggested to replace the term " the codes" by " the identifying code from an order and the identifying code from a person ".

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Patent 4,882,475), hereinafter referred to as Miller, and further in view of Walker et al. (US Patent 6,381,582), hereinafter referred to as Walker.

With regards to claim 1, Miller teaches a system comprising:

items of merchandising in a rack, each bearing a unique code, means for generating the codes, means for receiving a code and reading the code from an item of merchandise at an unmanned station (see at least FIGS. 5, 6, 7, 8, col. 2, lines 41-53, col. 5, lines 13-55, col. 6, line 61-col. 7, line 1).

Miller further teaches receiving orders from customers for takeout service (see at least col. 4, lines 34-47, "....an employee 10 receives a phone order..... If as an option the customer may pick up an order....") but does not disclose means for delivering a duplicate of each code to a different remote location. However, in the same field of purchasing goods from different remote locations, Walker teaches means for delivering a duplicate of each code to a different remote location (see at least col. 9, line 56-col. 12, line 12, FIGS. 5A, 5B, 6A, 6C. Note: the purchase number or order or confirmation number in Walker corresponds to the code in the application. Customer is permitted to print this if the code is in the form of bar-code to use it late at the local retail store). Doing so enables the purchaser to take this duplicate code to the local retail seller to identify the order place on Internet and make payment (see at least col. 11, line 10-col. 12, line 12). It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Miller to deliver a duplicate code to customers at different remote locations on a communication network like Internet and then to provide a means to receive this duplicate code at a store for identification purpose as explicitly disclosed in Walker.

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11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller/Walker and further in view of Chaco et al. (US Patent 5,822,544), hereinafter referred to as Chaco.

With regards to claim 2, Miller/Walker teaches a system as disclosed in claim 1 and analyzed above. Miller/Walker teaches a means for receiving a bar code (see at least Miller (col.6, line 66-col.7, line 51,) and matching the bar codes (see at least Walker col.11, line 10-col.12, line 12,). Miller/Walker does not disclose sounding an alarm if the codes do not match. As per knowledge generally available, means for sounding alarms are well known if the codes do not match. Chaco discloses sounding an alarm if the codes do not match (see at least col.9, lines 26-28, col.15, lines 43-col.16, line 9, col.22, lines 45-65, FIG.9, FIG.10). Doing so sends an alarm so the user or attendants nearby know that the correct container of medicines or food tray is not being handled and therefore a check should be carried out to ensure getting the right container or the food tray. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Miller/Walker to sound an alarm if the codes do not match as explicitly disclosed in Chaco.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller/Walker/Chaco.

With regards to method claim 3, all the limitations correspond to the limitations of system claim 2 and are therefore analyzed and rejected similarly.

13. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cupps, in view of Walker, further in view of Miller et al. (col.4, 822,475,), and further in view of Chaco.

With regards to claims 4-6, Cupps teaches a method and system comprising of maintaining a web page on the Internet, taking orders for food items on the web page and preparing food in accordance with the orders (see at least FIGS 1-2, 7-13, col.2, line 19-col.5, line 25, col.8, line 42-col.12, line 3).

Cupps further discloses generating unique identifying codes to persons placing the orders (see at least col.5, lines 14-15, col.8, lines 24-26, "...*When a customer's order is received by the online order machine 106, it is converted into an order text file 138 having a prescribed format as shown in Fig.6* ", col.10, lines 22-27, FIG.2, " Order Text File138 ", FIG.6, " Order Number ". Note: The generated Order number in the generated text file 138 corresponds to the unique code in the application as supported in the disclosure (see at least, page 4, lines 3-7, page 6, lines 22-25) and generating menu web pages in response to a customer's request for takeout service (col.2, lines 39-50). Cupps does not disclose delivering duplicate unique code that is the same generated order number to the remote location. However, Walker in the same field of remote purchasing on Internet, discloses delivering the duplicate unique code i.e. the same generated order number to a customer at a remote location (see at least col.9, line 56-col.12, line 12, FIGS. 5A, 5B, 6A, 6C. Note: the purchase number or order or confirmation number in Walker corresponds to the code in the application. Customer is

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permitted to print this if the code is in the form of bar-code to use it late at the local retail store). Doing so enables the purchaser to take this duplicate code to the local retail seller to identify the order place on Internet and make payment (see at least col.11, line 10-col.12, line 12). It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Miller to deliver a duplicate code to customers at different remote locations on a communication network like Internet and then to provide a means to receive this duplicate code at a store for identification purpose as explicitly disclosed in Walker.

Cupps/Walker does not disclose placing prepared orders in a bay/rack each labeled with a respective identifying code and price in machine-readable format, reading an identifying code from an order and name of the customer in human-readable format. However, in the same field of endeavor, Miller discloses placing prepared orders in a bay/rack each labeled with a respective identifying code with price in machine-readable format, and reading an identifying code from an order (see at least FIG.5, FIG.7, col.2, lines 41-45, "*FIG.5 illustrates a boxing station.....placing each pizza as prepared...in a box having a corresponding label affixed*", col.2, lines 49-50, "*FIG.7 illustrates an exemplary bar code label....*", col.5, lines 13-45, col.6, line 61-col.7, line 1, "*....The label segment of FIG.7.....The driver check-out station 70 may include an instant bar code reader.....representing the order identification number (e.g. number 2072, FIG.8)*") and name of the customer in human-readable format (see FIG.8, "*Benoit.....*") so that the packages containing the given order are identified and to prevent mix-ups while being

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collected by a given delivery person (see at least col.1, lines 41-65). It would have been obvious to a person of an ordinary skill in the art at the time of the invention to include the feature of placing prepared orders in a bay/rack each labeled with a respective identifying code and price in machine-readable format, reading an identifying code from an order and name of the customer in human-readable format in view of the express suggestion in Miller.

Cupps/Walker/Miller does not disclose sounding an alarm if the codes do not match. As per knowledge generally available, means for sounding alarms are well known if the codes do not match. Chaco discloses sounding an alarm if the codes do not match (see at least col.9, lines 26-28, col.15, lines 43-col.16, line 9, col.22, lines 45-65, FIG.9, FIG.10). Doing so sends an alarm so the user or attendants nearby know that the correct container of medicines or food tray is not being handled and therefore a check should be carried out to ensure getting the right container or the food tray. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Cupps/Walker/Miller to sound an alarm if the codes do not match as explicitly disclosed in Chaco.

Cupps/Walker/Miller/Chaco further discloses that if the codes do match alarm does not sound as explained above and accepting payment at the checkout station (see at least Walker col.11, line 10-col.12, line 12).

Conclusion

14. The prior art made of record and considered pertinent to applicant's disclosure:

(i) US Pub. No.: US 2002/0007321 A1 to Burton teaches systems and methods for on-line ordering.

(ii) US Patents 6,154,006 (see at least col.3, line 66-col.4, line 15, FIG.3,) to Hatanaka et al., and 6,484,113 (see at least, abstract, col.1, lines 52-64, col.4, lines 3-37, FIG.3) to Tsai et al. teach matching codes at unmanned stations and if the codes do not mach an alarm is sounded.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F (8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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Examiner
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January 20, 2003


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